

STATE OF INDIANA) IN THE MARION CIRCUIT/SUPERIOR COURT
COUNTY OF MARION) SS:
CAUSE NO. _____

STATE OF INDIANA,)

Plaintiff,)

v.)

DDS BABIES, INC., doing business as USA Baby)
Child Space; DEBORA SPAHN, individually and)
doing business as USA Baby Child Space; and)
DAVID SPAHN, JR., individually and doing)
business as USA Baby Child Space,)

Defendants.)

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FILED

(46) JAN 30 2009

Elizabeth A. White
CLERK OF THE MARION CIRCUIT COURT

**VERIFIED COMPLAINT FOR INJUNCTION,
RESTITUTION, COSTS, AND CIVIL PENALTIES**

The Plaintiff, State of Indiana, by Attorney General Gregory F. Zoeller and Deputy Attorney General Greg Schrage, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1, *et seq.*, for injunctive relief, consumer restitution, investigative costs, civil penalties, and other relief.

PARTIES

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Indiana Code § 24-5-0.5-4(c).
2. At all times relevant to this complaint, the Defendant, DDS Babies, Inc. ("DDS"), was an Indiana corporation engaged in the business of selling consumer goods, including but not limited to furniture, at its principal place of business located in Marion County at 8366 Castleton Corner Drive, Indianapolis, Indiana, 46250.
3. Defendant, David Spahn, Jr., is an owner and an officer of DDS, and is active in its management and operations. As owner, David Spahn, Jr. has controlled and directed the

affairs of the corporation, including DDS's advertising and sales practices, and has used the defendant corporation for the purpose of misleading and deceiving Indiana consumers as set forth herein.

4. Defendant, Debora Spahn is an owner and an officer of DDS, and is active in its management and operations. As owner, Debora Spahn has controlled and directed the affairs of the corporation, including DDS's advertising and sales practices, and has used the defendant corporation for the purpose of misleading and deceiving Indiana consumers as set forth herein.

FACTS

5. Since at least January of 2008, the Defendants have solicited and received orders to sell consumer goods, including but not limited to furniture.

6. Defendants have contracted with and received money from Indiana consumers, including but not limited to Scott E. Jeffries, Byron M. Goodman, and Tara L. Lawrence, for the sale of consumer goods.

7. Pursuant to Indiana Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of contracting that they would deliver the furniture within a reasonable period of time.

8. Defendants have ceased operations and have not contacted the consumers, including but not limited to Scott E. Jeffries, Byron M. Goodman, and Tara L. Lawrence, nor made their current contact information available.

9. As of today, Defendants have yet to either deliver the furniture ordered by Jeffries, Goodman, or Lawrence or provide them a refund.

COUNT I—VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

10. The Plaintiff realleges and incorporates by reference the allegations contained in Paragraphs 1 through 9 of this Complaint.

11. The transactions referred to in Paragraph 6 of this Complaint are “consumer transactions” as defined in Indiana Code § 24-5-0.5-2(a)(1).

12. Defendants are “suppliers” as defined by Indiana Code § 24-5-0.5-2(a)(3).

13. The Defendants’ representations to consumers, including but not limited to Scott E. Jeffries, Byron M. Goodman, and Tara L. Lawrence, that they would be able to purchase the subject of the consumer transaction as advertised by the Defendants, when the Defendants did not intend to sell it, constitute violations of the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-3(a)(11).

14. The Defendants’ representations to consumers, including but not limited to Scott E. Jeffries, Byron M. Goodman, and Tara L. Lawrence, that they would be able to deliver the furniture within a reasonable period of time, when the Defendants knew or reasonably should have known they could not, constitute violations of the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-3(a)(10).

COUNT II—KNOWING AND INTENTIONAL VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

15. The Plaintiff realleges and incorporates by reference the allegations contained in Paragraphs 1 through 14 of this Complaint.

16. The misrepresentations and deceptive acts set forth above were committed by the Defendants with knowledge and intent to deceive.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court to enter judgment against Defendants, DDS Babies, Inc. doing business as USA Baby Child Space; Debora Spahn, individually and doing business as USA Baby Child Space; and David Spahn, Jr., individually and doing business as USA Baby Child Space, and issue a permanent injunction, pursuant to Indiana Code § 24-5-0.5-4(c)(1), enjoining the Defendants from doing the following:

- a. representing, expressly or by implication, that the Defendants are able to deliver or complete the subject of a consumer transaction within a reasonable period of time, when the Defendants know or reasonably should know they cannot;
- b. representing, expressly or by implication, that the Defendants are able to deliver or complete the subject of a consumer transaction within a stated period of time, when the Defendants know or reasonably should know they cannot; and
- c. representing, expressly or by implication, that consumers will be able to purchase the subject of a consumer transaction as advertised by the Defendants, if the Defendants do not intend to sell it.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against Defendants for the following relief:

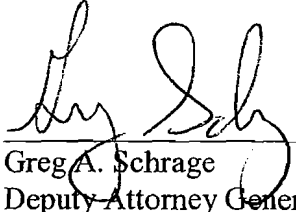
- a. cancellation of all of the Defendants' unlawful contracts with consumers, including but not limited to, Scott E. Jeffries, Byron M. Goodman, and Tara L. Lawrence;
- b. consumer restitution, pursuant to Indiana Code § 24-5-0.5-4(c)(2), for reimbursement of all unlawfully obtained funds remitted by consumers to

- the Defendants, including but not limited to Scott E. Jeffries, Byron M. Goodman, and Tara L. Lawrence in an amount to be determined at trial;
- c. costs, pursuant to Indiana Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- d. civil penalties, pursuant to Indiana Code § 24-5-0.5-4(g), for the Defendants' knowing violations of the Indiana Deceptive Consumer Sales Act, in the amount of Five Thousand Dollars (\$5,000.00) per violation, payable to the State of Indiana;
- e. civil penalties, pursuant to Indiana Code § 24-5-0.5-8, for the Defendants' intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana; and
- f. all other relief that the Court finds just and proper.

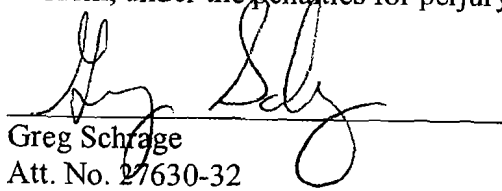
Respectfully submitted,

GREGORY F. ZOELLER
Indiana Attorney General
Atty. No. 1958-98

By:


Greg A. Schrage
Deputy Attorney General
Atty. No. 27630-32

I affirm, under the penalties for perjury, that the foregoing representations are true.



Greg Schrage

Att. No. 27630-32

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